IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
SHU *et al.*

Application No.: 10/790,584	Confirmation No.: 9861
Filed: March 1, 2004	Technology Center: 2600
For: MANET Routing Based on Best Estimate of Expected Position	Examiner: Ho, Huy C.

REQUEST FOR REHEARING UNDER 37 C.F.R. §41.52

MS Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Decision on Appeal issued by the United States Patent and Trademark Office on December 16, 2009 (the "Decision"), Appellants submit this Request for Rehearing.

I. Correction of Unintentional Typographical Error

In the Appeal Brief filed on February 1, 2008, the Real Party in Interest was incorrectly identified due to a typographical error. The real party in interest is The Charles Stark Draper Laboratory, Inc., as evidenced by the Assignment recorded on March 25, 2004 at Reel 015131, Frame 0387. Appellants respectfully request this correction be entered.

II. Rejection of Claim 9 Under 35 U.S.C. §103(a)

The Decision upheld the Examiner's rejection of claim 9 based on a combination of U.S. Patent No. 7,006,453 to Ahmed et al. ("Ahmed") and U.S. Patent Publication No. 2004/0219909 to Kennedy et al. ("Kennedy"). Appellants request reconsideration of the Decision insofar as it relates to claim 9 because the Board, we respectfully submit, has misapprehended both the Examiner's rejection of this claim and the reference upon which it relies. As explained below, and contrary to the reasoning set forth in the Decision, Kennedy

does not purport to predict the future physical location of a destination node, nor does the Examiner contend that it does.

In the final Office Action mailed on August 10, 2007 (the "Final Office Action"), the Examiner cites Kennedy as teaching:

> "The feature of alter [sic] a routing list of future intermediate nodes of the selected plurality of intermediate nodes when the predicted location of the destination node was based on outdated information[.]"[1]

Kennedy does not teach predicting a future location of a destination node as claimed. At best, per the Examiner's statement, Kennedy merely teaches altering a routing list stored at intermediate nodes — that is, the *route* that information follows through the network from a source node to a destination node. The actual physical location of the destination node is of no concern to Kennedy. Rather, Kennedy is concerned with the anticipated stability of network *routes*.[2] The predicted routes comprise "route segments" identified before any particular route is needed.[3] If a route is based on outdated information, the routing list is altered.[4] Predicting the stability of a *route* has nothing to do with predicting the future <u>location</u> of a particular <u>node</u>, and particularly not the destination node, and the Examiner did not contend that it does. Yet that is precisely what claim 9, which depends on claim 1, requires.

In the Answer issued on May 13, 2008, the Examiner stated, "Kennedy discloses the future routes are predicted based on the historic and current data," and continued, "Kennedy discloses the routing of messages based on a future location prediction."[5] From this, the Board concludes that (1) Kennedy teaches selecting an intermediate node based on the predicted future location of a destination node and (2) Kennedy teaches updating a list of intermediate nodes.[6]

To the extent the Examiner's Answer is interpreted to stray from the above-cited statement in the Final Rejection, it is simply incorrect. Appellants, in fact, interpreted the two statements as consistent — i.e., that if a network route is unstable, it may well be that the

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[1] Final Office Action, pg. 9.
[2] Kennedy, para. [0028].
[3] *Id.*
[4] *Id.*
[5] Examiners Answer dated May 13, 2008, pg. 12.
[6] Decision, pg. 6.

location of the destination node (or that of any intermediate node or nodes) has changed. That is not the same as <u>predicting the actual physical location</u> of a destination node, however. Nowhere does Kennedy suggest doing this, nor does Kennedy teach how it might be accomplished.

Therefore, Appellants respectfully request reconsideration of the Decision insofar as it bears on the rejection of claim 9.

Dated: January 11, 2010   Respectfully submitted,

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